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Attorney for Plaintiff
Dr. Anna Vertkin

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Dr. Anna Vertkin

Plaintiff,

vs.

Michael Vertkin, and Does 1-20.

Defendants

Case No.:

COMPLAINT FOR DAMAGES FOR
VIOLATION OF 18 USC §2511 1(a), and
1(c), 18 USC §1001, 42 USC 1301, PART C §
1177, VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE
§22947.2 (B)(1), TRESPASS TO CHATTEL,
INVASION OF SECLUSION.

I. INTRODUCTION

1. This is an action for money damages against Michael Vertkin, and Does 1-20 whom Plaintiff Dr. Anna Vertkin contends violated her constitutional rights by obtaining information from both her work and personal computer without authorization, in violation of 18 US Code section 2511(1)(a), and (c). Dr. Vertkin also contends that Mr. Vertkin committed acts in violation of 18 US Code section 1001, 42 US Code section 1301 Part C section 1177, and California Business and Professional Code Section 22947.2(b)(1), in effecting both electronic and confidential client information to be transmitted to his possession. Information was transferred via a "spyware" software program that was installed by Mr. Vertkin, as well as transferring her mail to a separate address. Both actions were done without Dr. Vertkins express consent, and were done for the sole purpose of obtaining information to commit several criminal

Plaintiff Dr. Anna Vertkin's Complaint for Violation of 18 USC 2511, 18 USC 1001, 42 USC 1301 PART C 1177,

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endeavors. Finally, Dr. Vertkin contends that the tortuous crimes of Trespass to Chattel and Invasion of Privacy, Intrusion to Seclusion were also committed.

II. JURISDICTION AND VENUE

2. The United States District Court, Northern District of California is the proper jurisdiction for the bringing of this claim pursuant to 18 U.S.C. §2511 sections (1)(a), and (1)(c), 18 US Code section 100, 42 US Code section 1301 Part C section 1177. In addition, the Court has pendant jurisdiction over the California Tort law claims of Trespass to Chattel and Invasion of Seclusion.

3. The acts and omissions complained of occurred in Mill Valley in Marin County, both being located in the Northern District of California. Therefore venue lies in this district in accordance with 28 U.S.C. §1391.

PARTIES

4. Plaintiff, Dr. Anna Vertkin is a Citizen of the United States of America and currently resides in the town of Mill Valley and the County of Marin California.

5. Defendant Michael Vertkin is a Citizen of the United States of America and currently resides in Sonoma, in the County of Sonoma California.

6. Plaintiff Dr. Anna Vertkin does not know the true names or capacities of the Defendants sued herein by the fictitious names of DOES 1 THROUGH 20, inclusive, and therefore sue said Defendants by fictitious names.

STATEMENT OF FACTS

7. On or about the end of August 2006, Dr. Vertkin and Michael Vertkin were both residing at 160 Rose Avenue, Mill Valley.

1 8. Sometime in September, 2006, Michael Vertkin filled a petition for dissolution of
2 marriage after 30 years of marriage.

3 9. On September 20, 2006 a restraining order was issued by the Marin County Superior Court
4 against Mr. Vertkin, directing that he was not to remove/transfer or otherwise alter any financial
5 accounts held between himself and his wife Dr. Vertkin.

6 10. Dr. Vertkin alleges that Mr. Vertkin installed spyware on home computer, and broke into
7 office and installed it on work computer.

8 11. The building Manager (Virginia Gilbert) of Dr. Vertkin's office was notified in
9 September, 2006 that on several occasions a white male fitting the physical description of Mr.
10 Vertkin had represented himself as an employee of the office, and was doing maintenance on the
11 machines at the offices of Dr. Vertkin.

12 12. A forensic computer technician reports that at one time there was a "keylogger" device
13 installed onto the harddrive of Dr. Vertkin's computer.

14 13. During September and October of 2006 the plaintiff alleges Mr. Vertkin removed in
15 excess of \$70,000.00 from a brokerage account with E-Trade (representing all of Dr. Vertkin's
16 emergency funds), as well as opened several credit cards in both of their names.

17 14. Dr. Vertkin stopped receiving mail at either her home or business address and alleges that
18 Mr. Vertkin changed her mailing address to have her mail forwarded to his current residence,
19 without her consent.
20

21 **FIRST CAUSE OF ACTION**

22 18 U.S.C. § 2511 (intentional disclosure)

23 15. Paragraphs one through fourteen of the Statement of Facts of this complaint are
24 incorporated by reference into this cause of action.
25

16. The described alleged actions of Mr. Vertkin intentionally intercepting emails, and other financial information from the office computer of Dr. Vertkin are a direct violation of Dr. Vertkins' rights. The Defendants (a) intercepted information without the consent of Dr. Vertkin, (b) using a "spyware" program that would track her keystroke information. This equipment was installed by Mr. Vertkin without express consent from the computer owner and operator (here, Dr. Vertkin), (c) information obtained was then intentionally disclosed to multiple third party(s) to move money from a brokerage account to his own personal account.

17. The acts of the defendant have caused irreparable harm to not only the credit and finances of the Plaintiff, but also her professional reputation. Dr. Vertkin would testify as an expert witness and will now have trouble doing so. The above mentioned actions are the direct and proximate cause of Plaintiff Dr. Anna Vertkins' injuries and constitute, in violation of 18 USC § 2511 entitling Plaintiff Dr. Anna Vertkin judgment against the responsible Defendants for damages, punitive damages and attorney's fees, as prayed for below.

SECOND CAUSE OF ACTION

18 U.S.C. § 2511, (Intentional Use)

18. Paragraphs one through fourteen of the Statement of Facts of this complaint are incorporated by reference into this cause of action.

19. The acts described herein by Defendants MICHAEL VERTKIN and DOES 1-20 against Plaintiff Dr. Anna Vertkin, violate her rights. The wrongful conduct of intentionally using the illegally garnered Electronic Communication to apply via the internet for multiple credit cards in the name of the Plaintiff without her consent is a direct violation of this law.

20. The aforementioned acts were the direct and proximate cause of Plaintiff Dr. Anna Vertkins' injuries and constitute a violation of her constitutional rights entitling Plaintiff Dr. Anna Vertkin to judgment against the responsible Defendants for damages, as prayed for below.

Plaintiff Dr. Anna Vertkin's Complaint for Violation of 18 USC 2511, 18 USC 1001, 42 USC 1301 PART C 1177,

THIRD CAUSE OF ACTION

18 USC §1001

21. Paragraphs one through fourteen of the Statement of Facts of this complaint are incorporated by reference into this cause of action.

22. The act(s) described herein by Defendants MICHAEL VERTKIN and DOES 1-20 against Plaintiff Dr. Anna Vertkin, violate her rights. The wrongful conduct of intentionally falsifying a change in her mailing address, both at her home and her office without her consent is in direct violation of this law.

23. The aforementioned acts were the direct and proximate cause of Plaintiff Dr. Anna Vertkins' injuries and constitute a violation of her constitutional rights entitling Plaintiff Dr. Anna Vertkin to judgment against the responsible Defendants for damages, as prayed for below.

FOURTH CAUSE OF ACTION

42 USC 1301, PART C § 1177

24. Paragraphs one through fourteen of the Statement of Facts of this complaint are incorporated by reference into this cause of action.

25. The act(s) described herein by Defendants MICHAEL VERTKIN and DOES 1-20 against Plaintiff Dr. Anna Vertkin, violate her rights.

26. As a private doctor, Dr. Vertkin is bound by the regulations of the Health Insurance Portability and Accountability Act. Private, confidential patient information was received and kept in her offices in Mill Valley California.

27. Dr. Vertkin alleges that her office computer was compromised by a "spyware program", which transmitted information to an outside source, which she believes to be Mr. Vertkin.

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1 28. Additionally, the mail both at her office, and her home was rerouted to a new address.
2 Dr. Vertkin believes that this was done by Mr. Vertkin as well. Obtaining individually
3 identifiable health information under false pretenses is a direct violation of this law.

4 29. The aforementioned acts were the direct and proximate cause of Plaintiff Dr. Anna
5 Vertkins' injuries and constitute a violation of her constitutional rights entitling Plaintiff Dr.
6 Anna Vertkin to judgment against the responsible Defendants for damages, as prayed for below

7
8 **FIFTH CAUSE OF ACTION**

9 California Business and Professional Code § 22947.2(b) (1)

10 30. Paragraphs one through fourteen of the Statement of Facts of this complaint are
11 incorporated by reference into this cause of action.

12 31. The acts described herein by Defendants Michael Vertkin and Does 1-20 against plaintiff
13 Dr. Anna Vertkin violate her rights under the Business and Professional code of the State of
14 California.

15 32. Being that defendant Michael Vertkin was not an authorized user as defined in the code
16 section et seq.,

17 33. That the defendant willfully caused computer software known as "keystroke" software to
18 be installed onto the computers of both the home and office of the plaintiff Dr. Anna Vertkin,
19 which allowed the defendant to obtain personal information about financial accounts of the
20 plaintiff.

21 34. These actions committed by the defendant caused irreparable harm to the plaintiff in
22 direct violation of her rights under the California Constitution entitling Plaintiff Dr. Vertkin to
23 judgment against the defendant, Michael Vertkin, for damages as prayed for below.

SIXTH CAUSE OF ACTION

California Tort Law

(TRESPASS TO CHATTEL)

35. Paragraphs one through fourteen of the Statement of Facts of this complaint are incorporated by reference into this cause of action.

36. Additional basis for liability and recovery of damages against defendants arise herein, and is subject to the Court's pendant jurisdiction, under California tort law, as a matter of trespass to Chattel for Plaintiff Dr. Anna Vertkin. Under both California and Common law this tort is defined as intentionally dispossessing another of the chattel, or using or intermeddling with a chattel in the possession of another. Defendant Michael Vertkin installed computer programs onto the computer of Dr. Vertkin with the express notion of obtaining information on those computers. He then used this information to gain personal reward as discussed above. All of this was done without the express permission from the Plaintiff regarding her personal property. Defendant Michael Vertkin knew or should have known that the information he was intercepting via electronic communication was privileged, and would cause harm to the Plaintiff. Michael Vertkin committed trespass to the chattel of Dr. Anna Vertkin under both California and common law.

SEVENTH CAUSE OF ACTION

California Tort Law

(INVASION OF PRIVACY- INTRUSION OF SOLITUDE)

37. Paragraphs one through fourteen of the Statement of Facts of this complaint are incorporated by reference into this cause of action.

38. Additional basis for liability and recovery of damages against defendants arise herein, and is subject to the Court's pendant jurisdiction, under California tort law, as a matter of

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1 Invasion of Privacy- intrusion of seclusion, for Plaintiff Dr. Anna Vertkin. Under both
 2 California and Common law this tort is defined as an invasion that would be highly offensive to
 3 the ordinary, reasonable man, as the result of conduct to which the reasonable man would
 4 strongly object. Further, the plaintiff must show some bad faith or utterly reckless prying.

5 39. Defendant Michael Vertkin installed computer programs onto the computer of Dr.
 6 Vertkin with the express notion of obtaining information on those computers. This is certainly
 7 an invasion that most any person would find deeply offensive. Being that the Defendant was in a
 8 period of legal separation from the plaintiff at the time of the occurrence, it is more than
 9 reasonable to believe that he knew this was unsanctioned behavior, and therefore could be
 10 construed as reckless prying. Defendant Michael Vertkin knew or should have known that the
 11 information he was intercepting via electronic communication was privileged, and would cause
 12 harm to the Plaintiff. Therefore, Michael Vertkin has committed Invasion of privacy-intrusion of
 13 solitude on Dr. Anna Vertkin under both California and common law

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment as follows:

- 16 1. Compensatory damages according to proof, including:
 - 17 a. Fine under 18 U.S.C 1001
 - 18 b. \$100,000 fine under 42 U.S.C. 1301C(1177)
 - 19 c. \$500 per violation of 18 U.S.C. 2511 A & C
- 20 2. Special damages in the form of lost future wages according to proof;
- 21 3. Punitive damages in the amount of three times the compensatory and special damages;
- 22 4. Costs of the suit, including the attorney's fees under both 42 U.S.C. §1988 and Cal. Code
- 23 of Civil Procedure §1021.5; and
- 24 5. Such other relief as may be warranted or as is just and proper.
- 25

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JURY DEMAND

Plaintiff hereby demands a trial by jury of all claims that are triable to a jury in this action.

Dated this 28th day of August, 2007



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